REMARKS

This amendment under 37 C.F.R. § 1.116 is being submitted with a Request for Continuing Examination, and is in response to the outstanding final Official Action mailed October 19, 2005. In view of the above claim amendments and the following remarks, reconsideration and allowance of this application is respectfully requested.

Claim 1 has been amended to more particularly point out and distinctly claim the subject matter that applicant regards as the invention. In particular, claim 1 has been amended to state that the lump sum payment is an up-front payment that is undivided or divided into a series of shorter term payments for less than one-half of the lease term. Up-front payments are disclosed throughout the specification, for example, at page 12. Otherwise, this was disclosed in original Claims 7 – 9 (now cancelled) and does not introduce new matter. Claim 1 has also been amended to replace "total rent payment" with "total lease payment," which was already recited in Claim 1 and also does not introduce new matter. Finally, Claim 10 has been amended to depend from Claim 1 instead of from cancelled Claim 9, the subject matter of which has been introduced by amendment to Claim 1. This also does not introduce new matter.

Instead, in view of the foregoing amendments, the claims are believed to be in condition for allowance. The claim amendments are believed to resolve the concerns raised by the Examiner to which they are addressed. Accordingly, reconsideration is respectfully requested. In the event any issues remain outstanding, the Examiner is asked to call the undersigned at the telephone number indicated below.

Turning to the Official Action, Claims 1, 2 and 4 – 25 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter Applicant regards as the invention. In Claim 1, the Examiner questioned the difference between "rent" and "lease" payments recited in the claim. This rejection is respectfully traversed in view of the above claim amendment for the following reasons.

Claim 1 has been amended to replace "rent" with "lease" to make clear that the two limitations refer to the same payment. By amending Claims 1 in this manner, this rejection of Claims 1, 2 and 4 – 25 under 35 U.S.C. §112, second paragraph has thus been overcome. Reconsideration by the Examiner and withdrawal of this rejection is respectfully requested.

Finally, Claims 1, 2 and 4 – 25 were rejected under 35 U.S.C. §103(a) as being unpatentable over an SBA Communications Corporation publication and the company website and Gross et al., U.S. Patent Application Publication No. 2003/0225665. The SBA Communications publication and website were cited as disclosing that SBA provided communication site services to the wireless communication industry, including a broad array of site acquisition, zoning, construction and tower space leasing services.

The Examiner noted that the cited SBA Communication publications failed to disclose a specific leasing term or offer wherein the total rent is less than the aggregate projected periodic lease payments for each property owner over the term of use, but cited Gross et al. as disclosing this. The Examiner once again noted that in typical property leasing agreements/purchase offers between tenants and landlords, terms and conditions such as lump sum payments can be negotiated, and concluded that it would have been obvious to one of ordinary skill in the art to negotiate on the basis of a variety of leasing scenarios and choices. This rejection is respectfully traversed in view of the above claim amendments for the following reasons.

Applicant notes that a date of invention can be established prior to Provisional Application Priority Date of Gross et al. However, because the foregoing claim amendments and the following remarks patentably define over the cited combination of prior art, Applicant does not present that evidence of earlier invention at this time and reserves the right to do so at a later date should this become necessary.

In particular, Gross et al., discloses a method in which one of two parties to a lease may treat it as an operating lease for accounting purposes while the other part treats it as a

capital lease for accounting purposes. In particular, a tax-indifferent property owner sells a building and leases the land under the building to investors. The land is leased for a twenty year term and the lease payment is deferred until the end of the lease. The former building owner then leases back the building he just sold to the investors and sub-leases the land he just leased to them. As long as the net value of the leaseback minus the deferred land lease payment is less than 90% of what the building was sold for, the former building owner is permitted to treat the building lease as an operating lease rather than a capital lease under Financial Accounting Standards Board (FASB) Rule 13.

On the other hand, because the new owner of the building is permitted to allocate all the lease payment he is receiving to the building because he did not buy the land, the lease former building owner treats as an operating lease can be treated by the new owner of the building as a capital lease and receive leverage lease treatment. Goss et al. explains:

> The result of leverage lease treatment is that, under GAAP, the investors would no longer need to declare losses on their financial statements as a result of the transaction because the gain recognized by the investors in the twentieth year would be allocated over the initial years of the lease term offsetting the effects of the deductions taken during this period.

At the end of the lease term, the tax-indifferent party acquires both the land and the building for the price of the land. The investors receive a significant return on their investment, favorable treatment on their balance sheet, positive cash flow throughout the life of the lease and significant tax benefits.

Thus, the net lease payments disclosed by Gross et al. do not represent a lump sum discount from the aggregate projected periodic lease payments for each property over the term of use. Instead they represent an allocation between the value of building rent and land rent for accounting purposes to permit one party to a lease to treat it as a capital lease and the

other party to the lease to treat it as an operating lease. The critical requirement to be able to do this is for the building purchaser to defer the lease payment for the land under the building until the very end of the lease while at the same time collecting lease-back payments for the building and sub-leaseback payments for the land from the building owner to whom the land lease payment is ultimately due.

Claim 1 has been amended to emphasize this distinction by requiring that the lump sum lease payment be made up-front and be either undivided or divided into a series of shorter-term payments for less than one-half of the lease term. Goss et al. teach against such a payment allocation because it would not accomplish their accounting objectives.

Furthermore, the advantages of front-end lump sum payments to the leasing of cellular communication tower sites over other payment options were previously demonstrated. For large networks the savings over the lease term can approach one billion dollars. This can only be learned by reading the present application.

Because the SBA Communication publications fail to disclose a specific leasing term or offer wherein the total rent is less than the aggregate projected periodic lease payments, and because the net lease payments disclosed by Gross et al. do not represent a lump sum discount from the aggregate projected periodic lease payments Claim 1 as amended patentably defines over the cited combination of prior art under 35 U.S.C. §103(a).

To be complete, Applicant also repeats the request that the Examiner identify the source for his statement that lump sum payments are conventional and typically negotiated in leasing agreements between tenants and landlords. Applicant does not understand this to be common to residential leases or commercial leases. It is an even greater leap of faith for the Examiner to go from this statement to the conclusion that it would be obvious to modify whatever lease terms are offered by SBA to include a front-end lump sum payment option, especially when the Examiner's original assumption does not differentiate between front-end and back-end lump sum payments. SBA only discloses what they do, not how they do it.

Instead, because Claim 1 has also been amended specifically to require an up-front lump sum payment that is either undivided or divided into a series of shorter-term payments for less than one-half of the lease term, as opposed to other payment options that supposedly can be negotiated, and because SBA Communications fails to teach this, and Goss et al. teach against this, Claim 1 further patentable defines over the cited combination of prior art on this basis.

Because the discounting a lease payment through the use of a front-end lump sum payments so that the total lease payment is less than the aggregate projected periodic lease payments can only be learned by reading the present specification, and because Claim 1 and the claims depending therefrom have been amended to require the up-front lump sum payment to be either undivided or divided into a series of shorter-term payments for less than one-half of the lease term, Claim 1 and the remaining claims depending therefrom patentably distinguish over the cited combination of prior art under 35 U.S.C. §103(a). Reconsideration by the Examiner and withdrawal of this rejection is therefore respectfully requested.

In view of the above claim amendments and the foregoing remarks, this application is now in condition for Allowance. Reconsideration is respectfully requested. The Examiner is reminded to telephone the undersigned if there are any remaining issues in this application to be resolved. Finally, if there are any additional charges in connection with this response, the Examiner is authorized to charge applicants' Deposit Account No. 19-5425 therefor.

Respectfully submitted,

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